

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE MAY 7, 2003

AMENDED IN SENATE APRIL 24, 2003

SENATE BILL

No. 700

Introduced by Senators Florez and Sher

February 21, 2003

An act to amend Section 42310 of, and to add Sections 39011.5, 39023.3, 40724, 40724.5, ~~41511.5~~, 40731, 41511.5, 42301.16, 42301.17, and 44559.9 to, the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, Florez. Air quality: emissions: stationary sources: agricultural operations.

(1) Existing law authorizes the board of every air quality management district and air pollution control district to establish a permit system that requires any person that uses certain types of equipment that may cause the emission of air contaminants to obtain a permit. Existing law exempts vehicles and certain types of equipment from those permit requirements.

This bill would eliminate that exemption for any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals. To the extent that the bill would increase the number of permits that a district board, electing to establish a permit system prior to January 1, 2004, would be required to issue, the bill would impose a state-mandated local program.

(2) Existing law defines various terms governing the construction of air pollution control laws in the state, and authorizes the state board to revise those definitions to conform with federal law.

This bill would define the terms “agricultural stationary source of air pollution” and “fugitive emissions,” and would prohibit, notwithstanding the existing authority, the state board from revising those definitions.

(3) The existing federal Clean Air Act requires districts to adopt local programs for issuing operating permits to major stationary sources of air pollutants. The existing act defines a stationary source as any building, structure, facility, or installation that emits or may emit any air pollutant.

~~This bill would require, by July 1, 2004, each district in which a stationary source of air pollution is located, to adopt a rule or regulation that requires the district to issue, each agricultural stationary source to obtain, by January 1, 2005, every operating permit required by the federal act for stationary sources. The bill would require, by January 1, 2005, each district in which an agricultural activity is conducted to adopt best management practices for that activity~~ *each district in which one or more agricultural stationary source of air pollution is located to, on or before July 1, 2004, adopt a rule or regulation for incorporation into the state implementation plan that requires each agricultural stationary source to obtain, on or before January 1, 2005, any operating permit applicable to that source required by the federal act for stationary sources, and a permit from the district requiring the source to use all reasonably available control measures, and commencing January 1, 2006, to use all best available control measures.*

The bill would require a district that is designated a nonattainment area for state and federal ambient air quality standards for particulate matter or ozone, and in which agricultural activities are conducted, to adopt a rule on or before July 1, 2004 for inclusion in the state implementation plan that requires owners and operators of agricultural lands, on or before January 1, 2005, to use best management practices to achieve the maximum feasible reduction in emissions for agricultural activities and to certify that use to the district. The bill would require a district that is designated as an attainment area for state and federal ambient air quality standards for particulate matter and that the state board determines does not cause or contribute to a violation of those standards in another district, to adopt, on or before July 1, 2005, best



management practices for voluntary use by owners and operators of agricultural lands.

The bill would require the California Air Pollution Control Officers Association (CAPCOA), in consultation and cooperation with the state board and other interested parties, to develop a clearinghouse of suggested control measures for agricultural stationary sources of air pollution and emissions from agricultural operations to reduce or eliminate emissions of regulated air pollutants or emissions of precursors that form regulated air pollutants. The bill would require the districts to submit suggested control measures for agricultural sources to CAPCOA, and would require that association to make those suggested control measures available to districts throughout the state.

This bill would require that an agricultural source of air pollution be regarded as a stationary source in the state for the purposes of the federal act. The bill would also require a district, when determining if an agricultural stationary source is a major stationary source of air pollution for the purposes of the federal act, to include precursor emissions from those sources, *unless the state board or a district determines that the precursor does not cause or contribute to air pollution or the formation of air pollutants.* ~~The~~

The additional duties for districts under the bill would impose a state-mandated local program.

(4) Existing law establishes the Capital Access Loan Program for Small Businesses, administered by the California Pollution Control Financing Authority, which provides loans through participating financial institutions to entities authorized to conduct business in the state and whose primary business location is in the state.

This bill would require the authority to expand the program to include outreach to financial institutions that service agricultural interests in the state for the purposes of funding air pollution control measures.

(5) Under existing law, any person who violates a rule, regulation, permit, or order of a district is guilty of a misdemeanor. Because this bill would increase the number of people who are subject to that provision, it would expand the scope of a crime, thereby imposing a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Agricultural operations necessary for growing crops or
4 raising fowl or animals are a significant source of directly emitted
5 particulates, and precursors of ozone and fine particulate matter.
6 These emissions have a significant adverse effect on the ability of
7 areas of the state, including, but not limited to, the San Joaquin
8 Valley, to achieve health-based state and federal ambient air
9 quality standards.

10 (2) Since 1999, the agriculture industry has reduced emissions
11 of oxides of nitrogen (NOx) by more than ~~200~~ 2000 tons per year,
12 emissions of particulate matter of 10 microns in diameter (PM 10)
13 by more than ~~400~~ 500 tons per year, and emissions of volatile
14 organic compounds (VOCs) from agricultural chemicals by more
15 than 20 percent. According to the state board, however,
16 agricultural sources of air pollution still contribute twenty-six
17 percent of the smog-forming emissions in the San Joaquin Valley.

18 (3) In the San Joaquin Valley, a large portion of the sources of
19 PM 10 emissions are areawide sources whose emissions are
20 directly related to growth in population and the resulting vehicle
21 miles traveled. According to the state board, however, agricultural
22 sources of air pollution account for over fifty percent of the
23 particulate air pollution generated in the valley during the fall,
24 amounting to over 170 tons per day of emissions.

25 (4) All parties living or operating a business in an area that has
26 been classified as being a nonattainment area with respect to the
27 attainment of federal or state ambient air quality standards share
28 the responsibility of reducing emissions from all criteria
29 pollutants.

30 (5) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.)
31 prohibits the state from adopting emission standards or limitations
32 less stringent than those established under the federal act,
33 including limitations on emissions from agricultural sources.



(6) Division 26 (commencing with Section 39000) of the Health and Safety Code establishes numerous policies and programs to reduce air pollutants for the protection of public health.

(7) The purpose of the act adding this section is to establish a new program at the state and regional levels to reduce air emissions from agricultural sources in order to protect public health and the environment.

(b) It is therefore the intent of the Legislature to require the State Air Resources Board and air quality management districts and air pollution control districts in the state to regulate stationary, mobile, and area sources of agricultural air pollution.

SEC. 2. Section 39011.5 is added to the Health and Safety Code, to read:

39011.5. (a) “Agricultural stationary source of air pollution” or “agricultural stationary source” means a source of air pollution or a group of sources on contiguous property under common ownership or control that meets—~~either~~ *any* of the following criteria:

~~(a)~~

(1) Is a confined animal facility, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, milking parlor, or system for the collection, storage, treatment, and distribution of liquid and solid manure, if domesticated animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are corralled, penned, or otherwise cause to remain in restricted areas for commercial agricultural purposes and feeding is by means other than grazing.

~~(b)~~

(2) Is an internal combustion engine used in the production of crops or the raising of fowl or animals, except an engine that is used to propel implements of husbandry, as that term is defined in Section 36000 of the Vehicle Code, as that section existed on January 1, 2003. Notwithstanding subdivision (b) of Section 39601, the state board may not revise this definition for the purposes of this section.

(3) *Is a Title V source, as that term is defined in Section 39053.5, or is a source that is otherwise subject to regulation by*

1 *a district pursuant to this division or the federal Clean Air Act (42*
2 *U.S.C. Sec. 7401 et seq.).*

3 *(b) Nothing in this section limits the authority of a district to*
4 *regulate a source over which it otherwise has jurisdiction pursuant*
5 *to this division.*

6 SEC. 3. Section 39023.3 is added to the Health and Safety
7 Code, to read:

8 39023.3. “Fugitive emissions” mean those emissions that
9 cannot reasonably pass through a stack, chimney, vent, or other
10 functionally equivalent opening, ~~when using the best available~~
11 ~~control technology.~~ Notwithstanding subdivision (b) of Section
12 39601, the state board may not revise this definition for the
13 purposes of this section.

14 SEC. 4. Section 40724 is added to the Health and Safety Code,
15 to read:

16 ~~40724. Not later than July 1, 2004, each district in which an~~
17 ~~agricultural stationary source of air pollution is located shall adopt~~
18 ~~a rule or regulation that requires the district to issue, and each~~
19 ~~agricultural stationary source to obtain, not later than January 1,~~
20 ~~2005, every operating permit required for stationary sources~~
21 ~~pursuant to Subchapter V (commencing with Section 7661) of~~
22 ~~Chapter 85 of Title 42 of the United States Code. Nothing in this~~
23 ~~section is intended to delay or affect any action taken by a district~~
24 ~~to reduce emissions of air contaminants from an agricultural~~
25 ~~stationary source prior to January 1, 2004.~~

26 SEC. 5. ~~Section 40724.5 is added to the Health and Safety~~
27 ~~Code, to read:~~

28 ~~40724.5. Not later than January 1, 2005, and in addition to any~~
29 ~~applicable requirement of the federal Clean Air Act (42 U.S.C.~~
30 ~~Sec. 7401 et seq.), each district in which an agricultural activity,~~
31 ~~including, but not limited to, tilling, disking, or activities related~~
32 ~~to tilling or disking, is conducted shall adopt best management~~
33 ~~practices for those activities. Nothing in this section is intended to~~
34 ~~delay or affect any action by a district to reduce emissions of air~~
35 ~~contaminants from those activities prior to January 1, 2004.~~

36 SEC. 6.—

37 *40724. (a) Each district in which one or more agricultural*
38 *stationary source of air pollution is located shall, on or before July*
39 *1, 2004, adopt a rule or regulation for incorporation into the state*
40 *implementation plan that requires each agricultural stationary*

1 source to obtain both of the following on or before January 1,
2 2005:

3 (1) Any applicable operating permit that is required pursuant
4 to Subchapter V (commencing with Section 7661) of Chapter 85
5 of Title 42 of the United States Code.

6 (2) A permit from the district requiring the source to do both of
7 the following:

8 (A) Until January 1, 2006, to use all reasonably available
9 control measures to reduce emissions from that source

10 (B) Commencing January 1, 2006, to use all best available
11 control measures to reduce emissions from that source.

12 (b) Nothing in this section shall delay or otherwise affect any
13 action taken by a district to reduce emissions of air contaminants
14 from an agricultural stationary source prior to July 1, 2004, or any
15 other requirements imposed on a district or a source of air
16 pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec.
17 7401 et seq.).

18 SEC. 5. Section 40724.5 is added to the Health and Safety
19 Code, to read:

20 40724.5. (a) On or before July 1, 2004, a district that is
21 designated as a nonattainment area for state and federal ambient
22 air quality standards for particulate matter of 2.5 microns or less
23 or of 10 microns or less, or for ozone, and in which agricultural
24 activities including, but not limited to, tilling, discing, cultivation,
25 the raising of fowl or animals are conducted, shall adopt a rule for
26 inclusion in the state implementation plan that requires owners
27 and operators of agricultural lands to do both of the following:

28 (1) On or before January 1, 2005, to use best management
29 practices to achieve the maximum feasible reduction in emissions
30 for agricultural activities.

31 (2) Certify to the district that they are using those practices.

32 (b) Notwithstanding subdivision (a), on or before July 1, 2005,
33 a district that is designated as an attainment area for state and
34 federal ambient air quality standards for particulate matter and
35 that the state board determines does not cause or contribute to a
36 violation of those standards in another district, shall adopt best
37 management practices for voluntary use by owners and operators
38 of agricultural lands to mitigate emissions from agricultural
39 activities in a manner that ensures that the district will maintain

1 attainment of the standards and mitigate any transport of
2 pollutants.

3 (c) Nothing in this section shall delay or otherwise affect any
4 action taken by a district to reduce emissions of air contaminants
5 from an agricultural stationary source prior to July 1, 2004, or any
6 requirements imposed on a district or a source of air pollution
7 pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

8 SEC. 6. Section 40731 is added to the Health and Safety Code,
9 to read:

10 40731. The California Air Pollution Control Officers
11 Association (CAPCOA), in consultation and cooperation with the
12 state board and other interested parties, shall develop a
13 clearinghouse of suggested control measures for agricultural
14 stationary sources of air pollution and emissions from agricultural
15 operations to reduce or eliminate emissions of regulated air
16 pollutants or emissions of precursors that form regulated air
17 pollutants. Each district shall submit suggested control measures
18 to CAPCOA and CAPCOA shall make available to all districts,
19 suggested control measures for all of the following in the
20 clearinghouse:

21 (a) Operations that create fugitive dust emissions, including,
22 but not limited to, discing, tilling, material handling and storage,
23 and travel on unpaved roads.

24 (b) Confined animal facilities, including, but not limited to, any
25 structure, building, installation, barn, corral, coop, feed storage
26 area, or milking parlor, including, but not limited to, a system for
27 the collection, storage, treatment, and distribution of solid manure
28 from domestic animals, including, but not limited to, cattle, calves,
29 horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks,
30 if those animals are corralled, penned, or otherwise caused to
31 remain in restricted areas for commercial agricultural purposes,
32 and feeding is by means other than grazing.

33 (c) Internal combustion engines used in the production of crops
34 or the raising of animals or fowl, except an engine that is used to
35 propel implements of husbandry, as that term is defined in Section
36 36000 of the Vehicle Code, as that section existed on January 1,
37 2003. Notwithstanding subdivision (b) of Section 39601, the state
38 board may not revise that definition for the purposes of this section.

39 (d) Other equipment, operations, or activities associated with
40 the growing of crops or the raising of animals or fowl, that emit,

1 *or cause to be emitted, any regulated air pollutant, or any*
2 *precursor to any regulated air pollutant.*

3 SEC. 7. Section 41511.5 is added to the Health and Safety
4 Code, to read:

5 41511.5. (a) An agricultural source of air pollution shall be
6 regarded as a stationary source, as that term is defined in Section
7 7411 of Title 42 of the United States Code.

8 (b) For the purpose of determining if an agricultural stationary
9 source of air pollution is a major stationary source of air pollution,
10 the state board and a district shall include precursor emissions,
11 including, but not limited to, ammonia, nitrogen oxides, sulfur
12 oxides, reactive organic gases and fugitive emissions from those
13 sources, *unless the state board or a district determines, based upon*
14 *clear and convincing scientific evidence, that the precursor does*
15 *not cause or contribute to air pollution or the formation of air*
16 *pollutants.*

17 (c) Nothing in this section shall limit or abridge the authority
18 granted pursuant to this division to the state board or a district to
19 regulate emissions of air contaminants from agricultural sources.

20 ~~SEC. 7.—~~

21 SEC. 8. Section 42301.16 is added to the Health and Safety
22 Code, to read:

23 42301.16. *In addition to complying with the requirements of*
24 *this chapter, a permit system established by a district pursuant to*
25 *Section 42300 shall ensure that any agricultural stationary source*
26 *that is required to obtain a permit pursuant to Title I (42 U.S.C.*
27 *7401 et seq.) and Title V (42 U.S.C. 7661 et seq.) of the federal*
28 *Clean Air Act are required by district regulation to obtain a permit*
29 *in a manner that is consistent with the federal requirements.*

30 SEC. 9. Section 42301.17 is added to the Health and Safety
31 Code, to read:

32 42301.17. (a) A district may adopt by regulation a program
33 under which the district does not require a permit to be obtained
34 by an agricultural stationary source of air pollution if the owner
35 or operator of the source has taken the following actions to reduce
36 emissions from the source:

37 (1) *Removed all internal combustion engines at the source and*
38 *replaced them with engines that meet or exceed the most stringent*
39 *standards adopted by the state board and the United States*

1 *Environmental Protection Agency for new internal combustion*
2 *engines.*

3 (2) *Reduced or mitigated emissions from all agricultural*
4 *activities, including, but not limited to, tilling, discing, cultivation,*
5 *the raising of livestock and fowl, and similar activities, to a level*
6 *that the district determines does not cause, or contribute to, a*
7 *violation of a state or federal ambient air standard, toxic air*
8 *contaminant, or other air emission limitation.*

9 (3) *Reduced or mitigated all emissions from any farm*
10 *equipment, underground petroleum fuel tanks, or other similar*
11 *equipment used in agricultural activities to a level that the district*
12 *determines does not cause or contribute to a violation of a state or*
13 *federal ambient air standard, toxic air contaminant, or other air*
14 *emission limitation.*

15 (b) *Subdivision (a) does not apply to those permits required to*
16 *be issued pursuant to Section 42301.16 for agricultural stationary*
17 *sources that are required to obtain a permit pursuant to Title V (42*
18 *U.S.C. 7661, et seq.)*

19 SEC. 10. Section 42310 of the Health and Safety Code is
20 amended to read:

21 42310. A permit shall not be required for any of the following:

22 (a) Any vehicle.

23 (b) Any structure designed for and used exclusively as a
24 dwelling for not more than four families.

25 (c) An incinerator used exclusively in connection with a
26 structure described in subdivision (b).

27 (d) Barbecue equipment that is not used for commercial
28 purposes.

29 (e) (1) Repairs or maintenance not involving structural
30 changes to any equipment for which a permit has been granted.

31 ~~As used in this section~~

32 (2) *As used in this subdivision, maintenance does not include*
33 *operation.*

34 ~~SEC. 8.—~~

35 (f) *Nothing in this section shall affect any requirements*
36 *imposed on ad district or a source of air pollution, including, but*
37 *not limited to, an agricultural stationary source, pursuant to the*
38 *federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).*

39 SEC. 11. Section 44559.9 is added to the Health and Safety
40 Code, to read:

1 44559.9. The authority shall expand the Capital Access Loan
2 Program established by this article to include outreach to financial
3 institutions that service agricultural interests in the state for the
4 purpose of funding air pollution control measures.

5 ~~SEC. 9.—~~

6 *SEC. 12.* The provisions of the act adding this section are
7 severable. If any provision of this act or its application is held
8 invalid, that invalidity shall not affect other provisions or
9 applications that can be given effect without the invalid provision
10 or application.

11 ~~SEC. 10.—~~

12 *SEC. 13.* No reimbursement is required by this act pursuant
13 to Section 6 of Article XIII B of the California Constitution for
14 certain costs that may be incurred by a local agency or school
15 district because in that regard this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 In addition, no reimbursement is required by this act pursuant
22 to Section 6 of Article XIII B of the California Constitution for
23 certain other costs that may be incurred by a local agency or school
24 district because a local agency or school district has the authority
25 to levy ~~services~~ *service* charges, fees, or assessments sufficient to
26 pay for the program or level of service mandated by this act, within
27 the meaning of Section 17556 of the Government Code.

